

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
CHENNAI

Arguments heard on 29.09.2016

Order passed on..18.11.2016.

C.A.No.12/2016

(I.A. u/s 244 of the Companies Act, 2013 r/w Rules 11 & 63 of NCLT Rules, 2016)

in

C.P. No.2/2016

(U/s 241 of the Companies Act, 2013)

Applicant/1st Respondent : M/s. Church of South India Trust Association
represented by Shri C.V.Shailandhar, Advocate

-- Vs --

Respondent No.1/Petitioner: Shri. John S.Dorai Vimal Sukumar
Rep. by Shri R.Padmanabhan, PCS

PRESENT: CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

ORDER

CH MOHD SHARIEF TARIQ, MEMBER(JUDICIAL) :- (ORAL)

1. Under adjudication is an Interlocutory Application (IA) numbered as C.A. No.12 of 2016 in C.P.No.2 of 2016. The Company petition is filed u/s 241 of the Companies Act, 2013 and this IA came to be filed u/s 244 of the Act r/w Rule 11 and Rule 63 of the NCLT Rules 2016 which has been filed on behalf of the Petitioner/1st Respondent Company.

2. The sum and substance of the IA is that a preliminary legal issue has been raised with respect to the maintainability of the CP on the ground that the Respondent/Petitioner is neither a member of R1 company nor 24 persons who had given consent to file the company petition are members of R1 company. It is stated in the IA that neither of them are entitled under provisions of Section 244 of the Act, 2013, to file the instant company petition invoking the provisions of Section 241 of the Act, 2013.

Based upon this fact, the prayer has been made to dismiss the company petition as not maintainable.

3. Before any opinion is formed in relation to the maintainability of the company petition, it is necessary to summarise some of the important facts and circumstances that necessitated the petitioner to file the company petition. It could briefly be stated that R1 company is a public religious and charitable trust known by the name and style "The Church of South India Trust Association" (for short "The Company") having registration No.112 of 1947-47 with CIN: U93090TN1947NPL000346. The company has been registered under Section 25 of the Companies Act, 1956 on 26.09.1947 as can be seen from the Certificate of Incorporation issued by the Registrar of Companies, Madras City.

4. The main object of the company set out in Sub Clause 'A' of Clause III of the Memorandum of Association, is to promote the objects of the charity and in particular assist pecuniarily or otherwise all or any of the societies, hostels, tribunals, houses, hospitals, dispensaries, industries, homes of refugees and other charities now existing or hereafter to exist in connection with the Church within the said area whether the same are confined to the said area or not and the activities connected thereto along with the powers to sell, mortgage, charge, lease, dispose of, exchange and otherwise deal with any property of or held by their association in any manner authorised by law with such consent (if any) as may be by law required and in accordance with such rules and regulations as may from time to time be laid down by the Synod of the Church of South India. Since the company is a religious charitable trust there is no authorised, issued, prescribed and paid up capital. As per the Articles of Association, the total number of members who are directors is restricted to ten and total number of office bearers is four. One third of the

members/office bearers should retire every year. Members shall be elected only by the Synod of the Church, and election shall be conducted every two years. The tenure of the present Synod was expired in January 2016. Thereafter, no such Synod is in its place. The Company constitutes 23 units called Dioceses and sub units called churches, educational institutions, hospitals and other institutions. The Churches under the Company have 45 lakhs worshipers spread over entire South India, who are beneficiaries/stakeholders of the Company. The company has been formed for the purpose of serving the needs of those beneficiaries/stakeholders. The company has been vested with several lakhs of crores worth of properties of all types to serve the needs of beneficiaries/stakeholders.

5. It may not be out of place to mention that the word “**Synod**” derived from the Greek “*synodos*” means “assembly” or “meeting”, and it is synonymous with the Latin word “*concilium*” means “council.” Originally, synods were meetings of bishops and the word is still used in that sense in Catholicism and Eastern Orthodoxy. Historically, a synod is a council of a church, usually convened to decide an issue of doctrine, administration or application. In modern usage, the word often refers to the governing body of a particular church, irrespective of whether its members are meeting or not. It is also sometimes used to refer to a church that is governed by a synod.

6. The matter complained of is detailed in the company petition. The company petition *inter alia* provides as follows:-

(i) It has been stated that in W.P.No.21343/2011 the Hon’ble Madras High Court directed the Registrar of Companies, Tamilnadu, Chennai, to carry out a detailed inspection of the Company u/s 209A of the Companies Act, 1956 and the Registrar of Companies has pointed out 27 irregularities

and issued show cause notice to the Respondents mentioned in the company petition.

(ii) There are 43 criminal cases instituted against the respondents which are pending before the Economic Offences Court, Egmore and also before the Regional Director, Ministry of Corporate Affairs, Chennai. It is averred in the petition that when explanation was called for by the ROC with respect to irregularities, the reply that was filed on behalf of the Company is as follows:

“The official members of CSITA are of on honorary basis and they keep changing over two years and these committee members are religious heads and they are not conversant with the provisions of the Companies Act.”

The Registrar of Companies has rejected the explanation and recommended action against the company and its office bearers through Serious Frauds Investigation Office (SFIO). The reason for such action is stated that the office bearers without any authority borrowed heavily on the properties of the company by way of creating charges on its properties.

(iii) The present committee members stated to have been indulging in selling the property elsewhere in South India, for throw away prices for their personal gains, causing irreparable losses to the company. Whereas the last Synod of church conducted for Biennium was in January 2014 and the same expired on 13.1.2016. Thereafter, the Synod was not conducted and no election to the company membership was held.

(iv) The present management committee is said to have executed powers of attorney to non-members of the company to deal with company's properties without any authorisation and have misused the office of the Company for their own benefits.

(v) The present management committee members are said to be there for more than six years without any legal base. Not only this, it has also been stated in the company petition that the Auditors who audited the accounts of the company have exhibited several disclaimers and denied to give their opinion on the incomplete accounts submitted to them for audit.

(vi) It is also mentioned in the company petition that the Income Tax Department has conducted a couple of special audits of the accounts of the company and found several irregularities, due to which the Income Tax Department has not issued "Income Tax Exemption Certificate" to the company for more than three years.

(vii) Besides the above, it is also stated that there is a civil litigation pending wherein the managing committee is restrained from performing their functions.

7. In the backdrop of the above stated facts, the interim prayers [available at Page 31 of CP] that are made for seeking interim directions are as follows :-

- a) *That the present Management Committee may be suspended to enable the Company to carry out its operations as per the provisions of the Companies Act;*
- b) *To direct the Company to appoint the newly elected persons as Management Committee of the Company and also members of the Company.*
- c) *To permit the newly appointed Management Committee to carry out operations of the Company as per the provisions of the Companies Act, 2013; and*

d) *To appoint such other person whom the Tribunal deems fit to supervise the functions of the newly appointed Management Committee.*

8. The I.A. numbered as CA No.12 of 2016 file in C.P.No. 2 of 2016 has been opposed by the Respondent/Petitioner by filing counter. The first main objection raised is, that Dr.Daniel R.Sadananda and C.Robert Bruce, Honorary Secretary and Honorary Treasurer respectively have no authority to file the I.A. because they are not the regular office bearers of the R1 company for the reasons that R1 company came to be incorporated under the provisions of the Company Law and has its management committee to represent. Therefore, the Honorary Secretary and the Honorary Treasurer are not legally entitled to represent R1 Company.

The second objection taken by the Respondent/Petitioner is that both the Honorary Secretary and the Honorary Treasurer who have signed on behalf of R1 Company did not have any right to do so. They have already been restrained by an order of injunction in a civil suit pending before the II Additional Senior Civil Judge, Warangal, by an order passed in O.S.No.12 of 2016 in I.A.No.15 of 2016 and the said order is still in force.

The third objection taken by respondent/petitioner is that by virtue of provisions of Clause IV of the Memorandum of Association, a person who is holding the position in any of the bodies of the church or SICA shall not be appointed for its salaried office of CSI or CSITA or Synod. The persons who have signed as Honorary Secretary and Honorary Treasurer of CSITA are also holding the salaried office as General Secretary and Treasurer respectively of the Synod.

9. In the counter, it has specifically been pleaded by the respondent/petitioner that they seek leave of this Tribunal under Section

244 of the Companies Act, 2013 to get waived off all the pre-requisites for filing the company petition, and if directed, will file a separate application to get invoked the proviso to Section 244 of the Act.

10. From the above said facts and circumstances which have been pleaded by the parties, the sole issue arises here is as to whether the petitioner fulfils the requirements laid down under Section 244 to file the company petition under Section 241 of the Companies Act, 2013. In this case, it is an admitted fact that R1 company is a religious and charitable trust, not having any share capital which falls within the purview of clause (b) of sub-section (1) of Section 244 of the Companies Act, 2013 which provides that in case of a company not having any share capital, 1/5th of the total number of its members, will have right to apply under Section 241 of the Act. As per applicant/respondent, the respondent/petitioner is not fulfilling the said requirements. Having said that the respondent/petitioner pleaded that he seeks leave of the Tribunal to file a fresh application if directed for grant of permission by this Tribunal for filing the company petition by waiving off all the requirements laid down under Section 244 of the Act. On this aspect, it is undoubtedly clear that such an application ought to have been filed along with the company petition but not thereafter. However, non-filing of the said application will not automatically bar the exercise of powers conferred on the Tribunal under proviso to Section 244 (1) of the Act. The Tribunal *suo moto* can waive off all or any of the requirements specified under Clause (a) or Clause (b) [as the case may be] of Section 244 (1) of the Act, so as to enable the member to apply under Section 241 of the Act.

11. The language used in the proviso gives to understand that the Tribunal has powers to waive all or any of the requirements specified in clause (a) and clause (b) of sub-clause (1) of Section 244 of the Act.

However, the term “member” has been used in the proviso, which has been defined under Sub-Section (55) of Section 2 of the Companies Act, 2013. The above definition of the term “member” is corresponding to Section 2(27) and Section 41 of the Companies Act, 1956. The said provisions of the Companies Act, 1956 came to be interpreted by the Company Law Board/High Courts/ Supreme Court in a catena of judgments. Such judicial pronouncements seem to have enlarged the scope of the term “member”. In other words, the judicial authorities have interpreted the term “member” liberally. In SVT Spinning Mills Vs Palanisamy (2009)151 Compcase 233 (Mad), after having a survey of various judgements, it has been confirmed that for interpreting the term “member” or “shareholder” for the purpose of Sections 397 and 398 of the Companies Act, 1956, it is not necessary for such person to comply with Section 41(2) of the Act, and a broader meaning to be given to the term “member” as per Section 2(27) of the Act, 1956.

12. However, in relation to R1 Company, there is no permanent membership as envisaged under Section 2(55) of the Companies Act, 2013. The definition of the term “member” given under the above said section is reproduced as follows:-

“(55) “member”, in relation to a company, means— (i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members; (ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company; (iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;”

13. If we look to the language used in the above mentioned definition of the term “member”, then the membership of R1 company is not falling

within the purview of the definition of Section 2(55) of the Companies Act, 2013 in any manner. Because, in the Articles of Association of R1 company, it has been provided that the members shall be such persons as shall be elected by the Synod of church and 1/3rd of the members shall retire at each meeting of the Synod of church but shall be eligible for re-election. The 1/3rd to retire shall be those who have been members longest since last elected as members. The Synod shall decide at its first meeting the order of retirement of the members elected at that meeting. The Synod of church used to be conducted once in two years. But it is alleged in para 4(g) at Page 7 of the counter that the Articles of Association has been amended by way of insertion of new clauses to the existing clause (4) and clause (7) of AoA, without seeking leave of the Central Government by which the tenure of the Synod has been increased from two years to three years and the said exercise of amending constitution of CSI is sham and illegal. The tenure of the membership has expired on 14.04.2016 and the members so elected by the Synod are continuing without any legal authority, since the membership is under challenge. Therefore, a complex question of fact is involved in this petition. In some of the judicial pronouncements, the courts have opined that if a complex question of fact is involved, then the petition is not to be thrown out at the threshold and can be heard on the merits even if the petitioner has not established that he is a member. However, before the relief is finally granted, the petitioner should be able to establish that he is a "member". Here in this case, on one hand, the election said to have been conducted by the Synod provide two years tenure of the said members, but the alleged illegal amendment made in the Articles of Association provides three years tenure of the members so elected. In these circumstances, the issue of maintainability of the petition cannot be treated as preliminary legal issue as it involves a mixed questions of fact and law, which needs to be tried

along with other issues raised. This view is fortified by the ruling given by the Division Bench of the Hon'ble Madras High Court reported in 1997(90) Comp.Cas.2905.

14. The Respondent-1/petitioner states in the company petition that R1 Company is a charitable institution which caters to the needs of beneficiaries/stakeholders. It has further been stated that a meeting was conducted on 16.1.2016 by issuing 40 days' notice to all by various means of communication which has been attended by more than 200 beneficiaries/stake holders from all over five southern States of South India representing all the Dioceses/sub-units of the churches and they appointed 53 General Members with a provision to increase the number for giving representation to all Dioceses/sub-units of the churches, i.e. up to 88, and 53 newly elected members elected 15 directors, two office bearers, viz. the Chairman and Treasurer/CEO among the Directors to carry out the management of the company and the stakeholders ensured proper representation being given for all the units of churches in five southern States. Out of the elected number of members, 24 persons have given their consent to the petitioner for filing the company petition.

15. The petition, in essence, is a representative petition which falls within the purview of Order 1, Rule 8 of the Civil Procedure Code, 1908. The petitioner represents a large number of persons who have a common interest in R1 Company which is a religious and charitable institution and admittedly, a public trust. Once, it is established that R1 Company is a charitable institution which caters the needs of the beneficiaries/stakeholders, the properties of such religious and charitable trust must be protected jealously. This has been observed by the Apex Court in Chenchu Rami Reddy & Anr. Vs Government of Andhra Pradesh & Ors. reported in 1986 SCR (1)989. In view of the factual and legal position

stated above, I am of the view that it is a fit case where all the requirements laid down u/s 244(1) (b) of the Companies Act, 2013 for filing company petition under Section 241 of the Act, 2013 need to be waived off. The proviso to Section 244 must be interpreted liberally so as to advance the cause of justice. For such interpretation of the said proviso, I get strength from a well-established maxim, *ut res magis valeat quam pereat*. This Latin maxim of interpretation translated into English means “that it is better for a thing to have effect than to be void”. In other words, to avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be justified in departing from the golden rule of construction so as to give effect to the object and purpose of the enactment. This has been laid down by the Apex Court in Girdharilal & Sons Vs Balbir Nath Mathur & Ors reported in 1988 AIR SC, 1499.

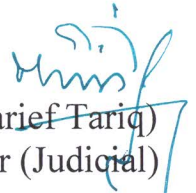
16. Further, it is worthwhile to mention that the I.A. under reference has been filed by the purported Honorary Secretary and Honorary Treasurer of R1 company, who have not mentioned anything either in the I.A. or in the affidavit filed in support thereof as to how they have been authorised to file the same on behalf of the Applicant/R1 company. A simple mention has been made in the said affidavit that they are filing the affidavit on behalf of the Applicant/R1 company on the basis of the circular Resolution dated 15.9.2016. But there is no documentary evidence to prove that R1 Company has authorised them to file the I.A. Therefore, they [Secretary & Treasurer] have no *locus standi* to file the I.A. The I.A. is liable to be dismissed *in limine* on this score alone. Therefore, on this ground and the other reasons stated above, the I.A. numbered as C.A.12 of 2016 filed in C.P.No.2 of 2016 stands rejected.

17. In the light of the above discussion, I hold that under the attending circumstances, the company petition cannot be dismissed at the threshold because it requires a detailed enquiry into the matter complained of and thus in exercise of the powers conferred under proviso to Section 244 of the Companies Act, 2013, I waive all the requirements of Section 244(1)(b) of the Companies Act, 2013 by treating the Company Petition under Order 1, Rule 8 of the Civil Procedure Code, as a representative petition r/w Section 241 of the Act, 2013 for the purpose of proceeding to enquire into the matter complained of. Thus, the Company petition is held maintainable. Any of the observations made above shall have no bearing on the merits of the case.

18. Since the Company Petition is held maintainable and in the given circumstances there is an urgent need to regulate the affairs of R1 Company. Thus, I proceed to remove all the directors and managing committee including office bearers by appointing Hon'ble Justice Shri ~~C.T. Selvam~~ ^{K. Sampath} (Retd) as the Chairman who is authorised to nominate four suitable persons to be chosen from the sub-units/Dioceses of Churches and three office bearers. The Chairman will recommend the names of the persons to this Tribunal for appointment as Director and as office bearers respectively. The remunerations of Directors and office bearers shall be fixed by the Chairman. However, such names shall neither be chosen from the group of petitioner nor from the respondents, but they must be independent persons to be chosen from the sub-units/Dioceses of Churches. The Chairman shall be entitled to monthly remuneration to be fixed by him that may commensurate to his status and R1 Company shall pay the same to him. The erstwhile management committee is

directed to hand over all the documents and books of accounts and other records of R1 company to the Registry of this Bench in a sealed cover within a week from the date of pronouncement of this order, so that the record could be handed over to the Chairman for regulating the day to day affairs and running the management of R1 company till further order. A certified copy of this order shall be sent by the Registry to the newly appointed Chairman for immediate compliance.

19. For the purpose of further proceedings, the company petition is posted on 7th December 2016.


(Mohd Sharief Tariq)
Member (Judicial)

Note :- The Registry reported that due to accidental slip an error arose in para 18 of this order, i.e., instead of retired Hon'ble Justice K.Sampath, the name of Hon'ble Justice "C.T.Selvam" got written who is a sitting judge. To rectify the error, the name of Hon'ble Justice "C.T.Selvam" is replaced with Hon'ble Justice "K.Sampath".


(Mohd Sharief Tariq)
Member (Judicial)

21/11/16.